

Appln No. 09/973,303
Amdt date January 28, 2005
Reply to Office action of November 3, 2004

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REMARKS/ARGUMENTS

Claims 1, 3-9, and 34-40 are currently pending in this application.

The Examiner continues to reject claims 1, 3-9, and 34-40 under 35 U.S.C. 103(a) as being unpatentable over Swartz et al. (U.S. Patent No. 5,923,735) in view of Sone (U.S. Patent No. 6,204,763). Applicant requests that Sone be disqualified as prior art under 35 U.S.C. § 103(c).

Effective November 29, 1999, 35 U.S.C. § 103(c) was amended to state that "[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person."

Sone qualifies as prior art only under 35 U.S.C 102(e) because the present application claims priority to U.S. Application Ser. No. 09/400,124, which was filed on September 21, 1999, as indicated in Applicant's Preliminary Amendment filed on October 9, 2001. Furthermore, both the subject matter disclosed in Sone and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Enclosed is a copy of an assignment and notices of recordation for Sone and the present application which establish their

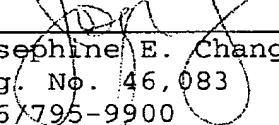
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common ownership. The assignment of the Sone patent is recorded on reel 9856, frame 0680. The assignment of the present application is recorded on reel 012445, frame 0306. Accordingly, Applicant respectfully requests that Sone be disqualified as prior art under 35 U.S.C. § 103(c).

In view of the above remarks, Applicant submits that claims 1, 3-9, and 34-40 are now in condition for allowance, and respectfully requests an early indication of allowance of claims 1, 3-9, and 34-40.

Respectfully submitted,
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JEC/lal

Enclosure: Copies of Recorded Assignments for
Appl. No. 09/973,303 and
U.S. Patent No. 6,204,763

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